

REMARKS

The Examiner has stated that Applicant has not fully responded to a prior Office Action in that Applicant failed to address an objection to claim 37. Applicant does not understand this statement by the Examiner since claim 37 was specifically amended (as noted in Applicant's response) to add proper antecedent support.

The clause in question in claim 37 reads, (bolding added) "without action taken on the part of **said message recipient**;" The first clause of claim 37 was amended to specifically recite (bolding added), "a memory for storing messages directed to a **message recipient** from a message sender,..." Thus, claim 37 was, in fact, amended to provide antecedent basis for the words "message recipient." If this does not correct the problem then the Examiner is invited to call Applicant's attorney at the below listed number to work out suitable language, since Applicant is confused as to the Examiner's concerns.

Claim 8 has been rejected under 35 U.S.C. § 112, second paragraph. Claim 8 has been amended and as amended should now be held allowable with respect to the 35 U.S.C. § 112 rejection.

Claims 1-5, 8-34, 36, 39, 41-44, 48-51 were rejected under 35 U.S.C. § 102 (e) as being anticipated by Wood, et al., (U.S. Patent No. 6,816,703).

In the original Office Action, these same claims were rejected over Wood for the very same reasons. Applicant provided a detailed discussion of each of the points listed by the Examiner and the Examiner simply dismissed all of Applicant's arguments with the curt statement "**Applicant's arguments filed on 8/9/05 have been fully considered.**"

The Examiner has not given Applicant the curtsey of his thinking so as to explain why Applicant's position is not acceptable. Without such an explanation, Applicant cannot assist the Examiner accordingly. In this regard, the Examiner's actions are improper and contrary to the PTO rules. Applicant has paid her filing fees and is entitled to a proper examination and a proper response from the Examiner. The Examiner is required to address the claim limitations as they are written in the claim, not how the Examiner chooses to characterize the claim wording. As will be pointed out below, claims 1, 19, 28 and 44 were summarily dismissed with a common statement and citation to Wood. However, the limitations in each

of these claims are different. Thus, it is impossible for all of these claims to be rejected with the same statement. Also, as will be seen from Applicant's remarks below, the Examiner's statement does not even properly address many of these claim limitations.

For example, claim 1 specifically recites, "a memory for receiving messages having associated therewith a controlled play time." As Applicant pointed out in the previous response, the received messages have the playing time **associated with the message**. The Examiner repeated his previous statement in which he said, "Wood et al teach on column 3 line 61-63, a memory for storing personalized information (claimed "messages") for playing at a predetermined time." The Examiner refuses to address or even discuss the fact that in the claim the message has associated with it the playing time for the message. The Examiner's refusal to address the claim limitation is improper and contrary to the rules (see, for example, M.P.E.P. § 2131) of the U. S. Patent Office.

If the Examiner persists in his rejection then the Examiner is respectfully requested to remove the finality of the rejection and to please issue a proper rejection in which the claim limitations are addressed. If the Examiner believes he has addressed the claim limitation then the Examiner is requested to explain how **a message that is stored for playing at a particular time** is the same as **messages having associated therewith a controlled play time**. If the Examiner can not explain how these two different concepts are the same then the Examiner **MUST** allow the claims. Simply saying the Examiner has considered this argument is not proper.

As a further example of the lack of proper examination, the Examiner has cited Wood at Col 3, line 61-63 to show "**personalized information**" for **playing at a predetermined time**. However, on page 5 of this same Office Action, in the last line of the first paragraph, the Examiner (referring to the same paragraph in Wood has said, (bolding added) "**There is no predetermined time associated with the personalized information.**" Thus the Examiner has in one sentence said that the personalized information of Wood has **no** predetermined time associated therewith and in another sentence, has cited the very same "personalized information" to reject the claim 1 clause that recites that the messages (personalized information) have personalized information associated with them. Thus, clearly, the Examiner is in error and claim 1 should be held allowable.

Claim 19 is directed to the situation where a message containing a message playing time is provided over a communication connection. The Examiner has not addressed this limitation. Wood does not even suggest the receipt of playing times (other than from the user of the device). Accordingly, claim 19 should be held allowable.

Claim 28 is directed to the receipt of attributes from a sender, the attributes received by a receiver and wherein at least one of the attributes establishes a message playing time. The Examiner has not addressed this limitation. Wood does not even suggest the receipt of any attributes from a sender, other than a message to be played. Accordingly, claim 28 should be held allowable.

Claim 44 is directed to the concept of creating messages to be sent to a recipient and to associate with each said message a time to deliver the message to the recipient and wherein the message is stored at the recipient's location until the delivery time. The Examiner has not addressed this limitation. Wood does not even suggest the receipt of playing times from any source and particularly not contained in a message. Accordingly, claim 44 should be held allowable.

Claims 2 and 34 recite, "wherein said message is played at said controlled play time without regard to any action taken by said message recipient." The Examiner has repeated his argument that because the message is received "when the user is sleeping" the message recipient did not perform any action for playing the message. The Examiner did not address how the system "knows" what time to play the message. In Wood, even though the message may arrive while the recipient is sleeping, it is still the **recipient** who sets the time that the message is to be played. Thus, again the Examiner has not addressed the claim limitation despite the fact that Applicant called this distinction to the Examiner's attention in the previous response. The Examiner is invited to explain to Applicant how the time for playing the message is determined in Wood. Applicant submits that the time is set as it would be in any alarm clock, by the user of the clock. Nothing in Wood even hints at the message playing time being set by data contained in the message itself. The Examiner has not stated otherwise. Unless the Examiner addresses this limitation, the claim must be allowed.

Claim 8 is directed to the situation where the play time (as contained in a message which has a message play time associated with it) controls the play time of a message that does not have a play time associated with it. As discussed above, the Examiner has not addressed where the play time comes from in Wood. The Examiner simply says that the play time is associated with the alarm. But the claim calls for the play time to have come in a message. The Examiner admits that the message does not have the play time. Thus the Examiner's own arguments are inconsistent and fail to address the claim language. Accordingly, claim 8 should be held allowable.

The Examiner's rejection of claim 9 is not understood. What does the Examiner mean by the profile? What profile?

Claim 10 is directed to the situation where the selection of the message to be played is controlled by information received from a message sender. In Wood, the only possible control would be external to the recipient's location since, as clearly discussed in Wood at col. 5, lines 13-16, on the day when an event is scheduled, the proper message is selected and broadcast. Nothing in Wood suggests that the selection is based on messages sent to the recipient and the Examiner has not said otherwise. Accordingly, claim 10 should be held allowable. Applicant is willing to amend claim 10 by adding at the end of the claim the words "as part of a received message", if such words would help the Examiner.

The Examiner has rejected claim 13 by saying, "Wood et al teach on column 3 line 37-39, message is played continuously for a period of time." However, claim 13 goes on to recite, "as controlled by information received with the message." The Examiner did not even address this limitation. Thus, claim 13 should be held allowable or a new Office Action given in which the Examiner properly addresses the claim limitations.

Claims 15, 26, 29, 36, 39, 42, 49, and 50 were all rejected with a single comment in which the Examiner stated, "Wood et al teach on column 4 line 3-9, depress a button to turn the alarm off..." First and foremost, the limitations in the above-recited claims are not all the same and thus the single sentence of the Examiner does not address the respective limitations of the claims. In claim 15, even though the claim recites **playing** selected messages at a time independent from the established message time, the Examiner cites a button to turn an alarm

off. Turn something **off** is certainly not turning something **on**, i.e., playing something. Claim 26 recites, “overriding said playtime with a locally provided playtime.” How can an override button for turning something off be equivalent to providing an alternate time? It can’t. Claim 29 recites having each playback time modified by data associated with a particular message. Again, how can an override button for turning something off be equivalent to providing a play time as contained in a message? Claim 36 is directed to selecting a playing time independent from the time contained in a message. Using an off button is the opposite from selecting a playing time. Accordingly, if the Examiner persists in his rejection of these claims then the Examiner must furnish a reason for rejecting each claim and the reason must be based on a reading of the reference on the actual claim language.

Claim 22 is directed to downloading at least a part of the message together with the playing time. The cited reference to Wood does not address downloading of playing time so it is impossible to download message together with playing time. Again, the Examiner has not addressed the limitation of the claim.

Claims 23 and 25 are directed to downloading the identity of a message together with the playing time. The cited reference to Wood does not address downloading of playing time so it is impossible to download a message identity together with playing time. Again, the Examiner has not addressed the limitation of the claim.

In view of the fact that, as discussed above in detail, the Examiner has failed to address the limitation of many of the claims, the Examiner must, if he persists in his rejection of the claims, issue another Office Action in order to properly comply with the Rules of the PTO and address the specific limitations of the claims. However, Applicant believes that, as discussed above, the claims are allowable over the Wood reference and favorable action in that regard is earnestly solicited.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 05708/P010US/08008819 from which the undersigned is authorized to draw.

Dated: November 15, 2005

Respectfully submitted,



By _____
David H. Tannenbaum
Registration No.: 24,745
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8333
(214) 855-8200 (Fax)
Attorney for Applicant